



STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF HUMAN SERVICES
KEVIN W. CONCANNON, DIRECTOR

INFORMAL COMPETITIVE SOLICITATION

For

Consultation to the Iowa Department of Human Services

Related to the Development and Publishing of a Request For Proposal (RFP)

To Provide Foster Group Care Services in Iowa

1. INTRODUCTION

In accordance with the informal competition procedures provided for in 11 Iowa Administrative Code rule 106.9, the Iowa Department of Human Services (the Department) is seeking consultation that will lead to the development of a Request For Proposal (RFP) to procure foster group care services across the state of Iowa. The Department's objective is to develop and issue this RFP no later than August 2008. It is the intent of the Department to obtain consultation from a person or person(s) with an expert level of knowledge of performance-based contracting and expertise with systems of care, including least restrictive, community and strength-based arrays of child welfare/juvenile justice services, and an evidence-based focus on foster group care's role in that array, to assist the Department to develop and issue the RFP. This RFP will not be to develop psychiatric inpatient care, but Iowa children served under this RFP will have behavioral health care needs¹.

The Department intends to award a contract for up to one year beginning on or about December 14, 2007 and ending on or about November 30, 2008. An amount up to \$49,999 will be available for this contract.

Up to one (1) additional one (1) year renewal for work and services beyond the scope described in this solicitation, with additional funding, may be negotiated at the sole discretion of the Department.

The contractor that is selected under this Informal Competitive Solicitation will be prohibited from bidding on the resulting foster group care RFP.

¹ Note that approved providers offer behavioral health remedial services through the Medicaid program to eligible children. The receipt of these remedial services is not dependent on where a child is living and eligible children may receive these remedial services in different types of settings, including foster group care.

2. HISTORY OF IOWA WORK LEADING TO THE FOSTER GROUP CARE RFP

In recent years Iowa's child welfare system has been in a process of redesign that has included movement toward procuring performance-based and outcome-focused service contracts for Iowa's child welfare population. This is bringing about the alignment of Iowa's service array with Child and Family Service Review (CFSR) outcomes, providing more individualized and flexible services, and helping to ensure statewide access to care. An example of this movement during 2007 was the issuance of RFPs to procure contractors to provide Safety Plans; Safety, Risk, and Permanency Services; and, Drug Testing, all statewide. These projects are designed to do the following, respectively: Offer time-limited services to help maintain child safety while Department staff are completing a child protective or child in need of assistance assessment; Promoting safety, permanency, and well-being for children and provide interventions to either preserve families or reunify children who have been removed from their homes; and, To identify qualified service providers of specified drug testing services for the Department throughout the state.

Iowa has also focused on the issue of disproportionate minority contact in the child welfare/justice system. Projects are currently underway in two of the Department's eight service areas.

Iowa's vision is that children grow up safe from abuse and with permanent family connections. The effort to redesign child welfare services is based on principles of strength-based supports focused on the family and provided in the most appropriate and least restrictive environments necessary. With the focus on safety, permanency, and well being, services are and should be provided in the home when possible. This approach is followed by increasingly intensive services, including out-of-home care, when that is appropriate.

The work related to the group care RFP should follow these principles while assisting Iowa to understand foster group care's role in a full array of services. Group care should not be viewed in isolation; rather, the work on this RFP must align with recent service development efforts and Iowa's Model of Practice.

A children's mental health system is also being enhanced in Iowa. With a high percentage of children in group care needing behavioral health care services, Iowa must ensure that group care services ultimately developed under this RFP are coordinated with other parts of Iowa's service delivery system to children and families. In addition to mental health, this, at a minimum, should include education, health care, and the legal system.

Iowa also intends to implement its federally approved IV-E waiver titled "Safe at Home." This program is intended to provide an alternative program of care for children with complex service needs who are at risk of placement in group care. The Safe at

Home program is not intended to be a service per se, but rather to encourage the development of a process for planning and providing care for children and families that results in a unique set of community-based services and natural supports, individualized for a child and family, to achieve a positive set of outcomes. Safe at Home should be a team approach that gives the family and child increased decision-making power. The Safe at Home program will enable providers to create (or access) less intensive placement options, stimulate new services and supports in the community, and implement a more family-centered approach to service planning and delivery for every referred child and their family.

Consultation is being sought to provide guidance to Iowa as it attempts to address issues raised in discussions among policy makers and stakeholders alike. These include, but are not limited to, questions such as the following:

- a. What should the parameters of the RFP include to ensure resultant services align with other state efforts and lead to group care services that are appropriate for children's needs?
- b. How can the Department ensure best practices to appropriately serve children in need of assistance (CINA) and delinquents, as well as populations with special needs?
- c. How can the Department best ensure statewide access and individualized outcome-focused services, either through a single, statewide lead agency/contractor or through multiple, regional contractors?
- d. How can the Department address considerations related to the age and gender of children placed together in facilities?
- e. How can the Department best address the service and structure needs of children who have no specific behavioral health care needs yet require some structure in their lives or have a need to attain additional skills to transition out of foster care to young adulthood?
- f. How can the Department coordinate its intent and efforts to implement its federally approved IV-E waiver with efforts related to the purchase of foster group care services?
- g. How can the Department ensure culturally competent services?

3. RESTRICTION ON COMMUNICATION

From the date of issuance of this Informal Competitive Solicitation until the announcement of the apparent successful bidder, bidders may not contact any employee of the State of Iowa other than the identified contact person about this informal solicitation. Bidders may contact the Issuing Officer in writing with questions related to the interpretation of this Informal Competitive Solicitation and the procurement process. Written responses to all questions received will be provided to all known potential bidders. If a bidder or someone acting on a bidder's behalf attempts to discuss this Informal Competitive Solicitation orally or in writing with any members of the evaluation committee, or any employee of the State of Iowa, other than Issuing Officer, the bidder may be disqualified.

4. QUESTIONS, REQUESTS FOR CLARIFICATION, AND SUGGESTED CHANGES

Potential bidders that submit a Letter of Intent to Bid by the due date are invited to submit via email questions and requests for clarifications regarding this solicitation. Potential bidders may also submit suggestions for changes to the requirements of this solicitation. The questions, requests for clarification, or suggestions must be in writing and received **via email** by the Issuing Officer before 4:00 PM (local time) on November 8, 2007. Oral questions will not be permitted. The email address to use is: **mmuir@dhs.state.ia.us**

If the questions, requests for clarifications, or suggestions pertain to a specific section of this solicitation, the page and section number(s) must be referenced. Written responses to questions, requests for clarifications, or suggestions will be emailed on or before November 13, 2007 only to potential bidders that have submitted a Letter Of Intent to Bid by the due date. A bidder shall acknowledge receipt of the Department's responses in its proposal. The Department's written responses will be considered part of this solicitation. If the Department decides to adopt a suggested change, the Department will issue an amendment to this solicitation.

The Department assumes no responsibility for verbal representations made by its officers or employees unless such representations are confirmed in writing and incorporated into this solicitation.

5. LETTERS OF INTENT TO BID

Potential bidders must email their Letter of Intent to Bid to the Issuing Officer by November 8, 2007. The intent to bid should include the bidder's name, contact person, mailing address, email address, fax number, telephone number, and a statement of intent to bid in response to this solicitation.

The Letter of Intent to Bid neither obligates a potential bidder to submit a proposal nor is it required in order to submit a proposal. However, the Department will only accept questions, requests for clarifications, or suggestions about the solicitation submitted by entities that have indicated their intent to bid on this solicitation. Notifications of any additional solicitation postings, including amendments and answers to questions, will be sent via email to only those bidders who have submitted a Letter of Intent to Bid.

6. SCOPE OF SERVICES

The successful bidder will provide required consultation services to the Department. Such services shall include, but are not limited to, the following:

- a.** Successful, on-site, facilitation of the RFP Development Team's work resulting in the publishing of the RFP by August 2008. A minimum of six (6), with preferably up to ten (10), one-day on-site meetings held with the RFP Development Team or other constituencies will be needed.

- b.** Participation in other telephone conferences scheduled, as determined by the Department.
- c.** Providing to the RFP Development Team an overview of what other states have done relative to child welfare and foster group care, reporting what has worked and what has not worked, and sharing lessons learned that can be incorporated into this project.
- d.** Development of a project plan, divided by each phase of the overall project and including an itemized list of tasks that need to be accomplished in order for the Department to write the RFP.
- e.** Providing the RFP Development Team with research of evidenced-based practices to inform the approach taken with Iowa's RFP for group care.
- f.** Descriptions of various and innovative national/state models of foster group care services, including models of funding and related financial information.
- g.** Assisting the RFP Development Team to reach decisions needed for the various issues presented above in *HISTORY OF IOWA WORK LEADING TO THE FOSTER GROUP CARE RFP*.
- h.** Design and facilitate the implementation of an Iowa environmental scan that will lead to acquiring comprehensive input from the multiple service, consumer, policy maker, stakeholder, and political factions of Iowa's child welfare and juvenile justice system. This may involve additional on-site time in Iowa.
- i.** Maintain records of project development -- all notes and other written products shall be turned over to the Department upon completion of the contracted work.

7. THE PROPOSAL

The Department reserves the right to reject any or all proposals, in whole or in part, to advertise for new proposals, to abandon the need for such services, and to cancel this Informal Competitive Solicitation at any time prior to the execution of the written contract.

All information submitted by a bidder may be treated as a public record by the Department unless the bidder properly requests that the information be treated as confidential information in accordance with the public records laws of the State of Iowa at the time its proposal is submitted.

The costs of preparation and delivery of the bid proposal are solely the responsibility of the bidder.

By submitting a proposal, the bidder agrees that the Department may copy the proposal for purposes of facilitating the evaluation of the proposal or to respond to requests for public records and represents that such copying will not violate the rights of any third party.

By submitting a proposal, the bidder agrees that it will not bring any claim or have any cause of action against the Department based on any misunderstanding concerning the information provided herein or concerning the Department's failure, negligent or otherwise, to provide the bidder with pertinent information as intended by this Informal Competitive Solicitation.

Proposal submission

Proposals must include the bidder's project costs and sufficient information regarding the bidder's ability to perform the consultation services sought to enable the Department to make a judgment about the bidder's ability to perform the work identified in the Scope of Services.

Proposal contents shall include, but are not limited to, the following:

Cost proposal

- This proposal shall include cost information that is sealed separately from the Technical proposal. The contract resulting from this solicitation will be for an all-inclusive rate that will be paid in installments based on successful completion of the various phases of the project. The cost proposal should identify the projected costs associated with each of these phases. Beyond this all inclusive rate by the successful bidder, no other costs can be charged to the Department, such as, but not limited to, travel, meals, per diem costs, materials, etc.

Technical proposal

- A description of the bidder's qualifications that relate directly to the expectations described in *Desired Qualifications And Background Of Consultant*
- A project plan detailing the proposed approach to accomplishing tasks associated with each phase of the project
- Proposed methods of conducting an environmental scan, the results of which will be used to inform the work related to the development of the RFP -- this should include suggestions about how to best conduct it, how data will be collected and analyzed, and how that data will be used to develop the RFP
- Three letters of reference from representatives of entities of three different states, excluding Iowa, regarding the bidders ability to do the following: Provide technical expertise, utilize facilitation skills to achieve group consensus or decision making, identify and prioritize tasks, provide oversight and constructive feedback, and to deliver a product on time -- all letters shall include the writer's telephone number
- Three letters of reference from entities located in three different states, excluding Iowa, regarding the bidder's consultation work with state government and/or organizations that have at least a \$10 million annual gross revenue -- the consultation must have been focused on foster group care or related services and all letters shall include the writer's telephone number

Bidders must submit one (1) hard-copy original proposal and six (6) paper copies of it, along with one (1) complete electronic copy that is fully compatible with Microsoft Windows 2000 and related applications (preferably in the *.pdf format that can be opened by the Adobe Reader). **These must be received by the Issuing Officer no later than Noon (local time), November 20, 2007.** Any proposal received after this deadline will be rejected and returned to the sender. All paper copies must be

individually bound or stapled with all pages numbered and labeled with the bidder's name. Proposals must be sent to the following:

Michelle Muir, Issuing Officer
Division of Child and Family Services
Iowa Department of Human Services
1305 East Walnut Street
5th Floor Hoover State Office Building
Des Moines, Iowa 50319
Email address: mmuir@dhs.state.ia.us
Telephone: 515/281-6871
Fax: 515/281-6248

8. DESIRED QUALIFICATIONS AND BACKGROUND OF CONSULTANT

- a. Demonstrated ability to facilitate large groups toward consensus or decision-making.
- b. An expert level of knowledge of and experience in strength-based services to children and families and child welfare and juvenile delinquency evidence-based best practices.
- c. A clear understanding of children's systems of care and the child welfare and juvenile justice service arrays, serving children adjudicated as CINA or as delinquent, and an evidence-based approach to articulating group care's role in that array.
- d. Familiarity with national and state models to deliver foster group care residential programs as part of a system of care for children adjudicated as CINA or as delinquent.
- e. Experience with or knowledge of RFP development, fundamentals of procurement, and performance-based contracting models that will assist the Department with developing and publishing an RFP.
- f. Knowledge of CFSR outcomes and best practice experience.
- g. Project management skills

9. TIMETABLE

The dates set forth below are for informational planning purposes only. The Department reserves the right to change the following dates:

October 31, 2007	Submit Informal Competitive Solicitation to the Iowa Targeted Small Business (TSB) web site
November 2, 2007	Submit Informal Competitive Solicitation to potential bidders
November 8, 2007	Deadline for the Department to receive questions from potential bidders (by 4:00 PM local time)
November 8, 2007	Deadline for the Issuing Officer to receive a Letter of Intent to Bid (by 4:00 PM local time)

November 13, 2007	Answers to questions emailed to potential bidders that submitted a Letter of Intent to Bid (Department offices will be closed on November 12 due to the Veterans' Day holiday)
November 20, 2007	Proposals due at Noon (local time)
November 27, 2007	Announce apparent successful bidder
December 14, 2007	Deadline for executing contract
December 14 – 2007 – November 30, 2008	Time frame of contract
December 17, 2007	Anticipated first on-site meeting held

10. PERFORMANCE EXPECTATIONS

a. Phase One– Initiate consultation and project plan (December 2007 – February 2008)

Deliverables

- Complete project plan per each phase of the overall project
- On-site facilitation of the RFP Development Team meetings
- Consultation and information is provided

Measures

- Project plan is delivered to and approved by the RFP Development Team (by January 2008)
- On-site facilitation of the RFP Development Team is provided as described in the contract (ongoing per agreed upon schedule)
- The information defined in the Scope of Services is delivered to the RFP Development Team (re: national and other state models, evidence-based best practices, funding and related financial information, etc.)
- Progress notes/written status reports of progress and discussions are delivered to the RFP Development Team

b. Phase Two – Environmental scan and RFP parameters identified (February – March 2008)

Deliverables

- On-going consultation and group facilitation, including defining parameters of the RFP
- Environmental scan completed
- Maintain records of project development

Measures

- On-site facilitation of the RFP Development Team is provided as described in the contract (ongoing per agreed upon schedule)
- An environmental scan is designed, its implementation is facilitated, and its results are analyzed
- The RFP Development Team discussions are facilitated leading to decisions needed around the various issues presented in *HISTORY OF IOWA WORK LEADING TO THE FOSTER GROUP CARE RFP*
- The strategy and parameters of the RFP are decided by March 31, 2008
- Progress notes/written status reports of progress and discussions are delivered to the RFP Development Team

c. Phase Three– RFP drafted by the Department (April – May 2008)

Deliverables

- Feedback provided on RFP drafts

Measures

- On-site facilitation of the RFP Development Team's work resulting in the drafting of the RFP by May 26, 2008
- Participation in other telephone conferences as scheduled
- Progress notes/written status reports of progress and discussions are delivered to the RFP Development Team

d. Phase Four – RFP is published and follow up (June – August 2008)

Deliverables

- Ongoing consultation as scheduled

Measures

- On-site facilitation of the RFP Development Team's work to refine the RFP, resulting in the publishing of the RFP by August 2008
- Participation in other telephone conferences scheduled as determined by the Department

- Progress notes/written status reports of progress and discussions are delivered to the RFP Development Team

e. Phase Five – Follow up to RFP and feedback on bid proposals
(September – November 2008)

- Ongoing consultation as agreed upon

Measures

- On-site or telephone facilitation of the RFP Development Team's work in response to the bid proposals
- Progress notes/written status reports of progress and discussions are delivered to the RFP Development Team
- All notes and other written products are delivered the Department upon completion of the contracted work

11. PROPOSAL EVALUATION CRITERIA

The Department will utilize an evaluation committee composed of representatives of the child welfare and juvenile justice system to evaluate the proposals. The evaluation committee will consider all information provided in the proposal when making its recommendation and may consider relevant information from other sources. The evaluation committee will award the contract to the bidder submitting the best proposal. The lowest priced proposal will not necessarily be the best proposal.

The evaluation committee's selection will be subject to the final approval of the Administrator of the Division of Child and Family Services. The proposals will be evaluated and a recommendation will be made using the following criteria, which are listed in no particular order:

- a. Cost;
- b. Related experience and references that demonstrate, to the satisfaction of the Department, that the bidder has the expertise and ability to meet the requirements of the Scope of Services (as examples, experience with procurement processes, knowledge of national service array trends, knowledge and experience related to CFSR, familiarity with evidence-based best practices, etc.);
- c. The proposed project plan that should demonstrate an understanding of the work needed and the capacity of the bidder to complete the work within the identified time frames.

If there is a tie for the best proposal and only one of the bidders is an Iowa business, the Iowa business shall be given preference over the out of state bidders.

12. NOTICE OF INTENT TO ENTER INTO CONTRACT NEGOTIATIONS

Notice of Intent to Enter into Contract Negotiations will be mailed by November 28, 2007 to all bidders submitting a timely bid proposal. The Notice of Intent to Enter into

Contract Negotiations is subject to execution of a written contract and, as a result, the Notice does not constitute the formation of a contract between the Department and the apparent successful bidder.

13.ACCEPTANCE PERIOD

Negotiation and execution of the contract shall be completed no later than **December 14, 2007**. If the apparent successful bidder fails to negotiate and execute a contract, in its sole discretion, the Department may revoke the award and award the contract to the next highest ranked bidder or withdraw the Informal Bid Solicitation.

The Department further reserves the right to cancel the award at any time prior to the execution of a written contract.

14.REVIEW OF AWARD DECISION

Bidders may request review of the award decision by filing a written appeal to:

Director
Iowa Department of Human Services
Hoover State Office Building, 5th Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114

The appeal must be filed within five (5) working days after the Notice of Intent to Award is issued. The request to review the award decision must be in writing and must clearly and fully identify all issues being contested by reference to the page and section number of the Informal Competitive Solicitation. The Director shall review the award decision based on the same information that was before the evaluation committee and the Administrator for the Division of Child and Family Services. An evidentiary hearing will not be conducted. The Director shall issue a written decision within ten (10) working days of receipt of the review request. The decision of the Director shall be final. A request to review the award decision shall not stay negotiations with the apparent successful bidder.

15.DEFINITION OF CONTRACT

The full execution of a written contract shall constitute the making of a contract for services and no bidder shall acquire any legal or equitable rights relative to the contract services until the contract has been fully executed by the apparent successful bidder and the Department.

16.CONTRACT TERMS AND CONDITIONS

The contract terms contained in **Attachment 1** are not intended to be a complete listing of all contract terms but are provided only to enable bidders to better evaluate the costs associated with this procurement and the potential resulting contract. Bidders should plan on such terms being included in any contract executed as a result of this

procurement. All costs associated with complying with these requirements should be included in the revenue proposal or any pricing quoted by the bidder.

By submitting a proposal, each bidder acknowledges its acceptance of these specifications, terms and conditions without change except as otherwise expressly stated in its proposal. If a bidder takes exception to a provision, it must state the reason for the exception and set forth in its proposal the specific contract language it proposes to include in place of the provision. Exceptions that materially change these terms or the requirements of the procurement may be deemed non-responsive by the Department, in its sole discretion, resulting in possible disqualification of the proposal. The Department reserves the right to either execute a contract without further negotiation with the successful bidder or to negotiate contract terms with the selected bidder if the best interests of the Department would be served.

Attachment 1 – Sample contract that will be completed to meet the specific needs of this project.

CONTRACT FOR [REDACTED]
BETWEEN THE IOWA DEPARTMENT OF HUMAN SERVICES
AND
[REDACTED]

This Contract for [type of services] Services is between the Iowa Department of Human Services and [name of the contractor]. The parties agree as follows:

SECTION 1. IDENTITY OF THE PARTIES.

1.1 The Iowa Department of Human Services ("Department") is authorized to enter into this Contract. The Department's address is:

1.2 [full legal name of the Contractor] ("Contractor") [the Contractor's business form] is organized under the laws of the state of [state where the Contractor is organized or incorporated] and authorized to do business in the state of Iowa. The Contractor's address is [the Contractor's address].

The contractor [is / is not] a business associate under the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

SECTION 2. PURPOSE.

The parties have entered into this Contract for the purpose of retaining the Contractor to provide: [enter a brief description of the product or services to be provided].

SECTION 3. DURATION OF CONTRACT.

The term of this Contract shall be [enter beginning date] through [enter ending date], unless terminated earlier in accordance with the Termination section of this Contract. The Department shall have the option to renew this Contract for up to [enter number of possible additional 1 year extensions] additional one (1)-year extensions by giving the Contractor written notice of the extension decision at least sixty (60) days prior to the expiration of the initial term or renewal term.

SECTION 4. DEFINITIONS.

SECTION 5. SCOPE OF SERVICES.

5.1 Scope of Services.

The Contractor shall provide the following services in accordance with the defined performance criteria as set forth below [or in Exhibit [] attached hereto and made part of this Contract by this reference].

5.1.1

5.1.2

5.1.3

5.2 Performance Measures

5.2.1

5.2.2

5.2.3

5.3 Monitoring Clause.

[Name or Title] will:

5.4 Review Clause.

5.6 Industry Standards.

Services rendered pursuant to this Contract shall be performed in a professional and workmanlike manner in accordance with the terms of this Contract and the standards of performance considered generally acceptable in the [insert type of industry] for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard.

5.7 Key Personnel.

Department:

Iowa Department of Human Services
Division of

Contractor:

5.8 Non-Exclusive Rights.

This Contract is not exclusive. The Department reserves the right to select other contractors to provide services similar or identical to the Scope of Services described in this Contract during the term of this Contract.

SECTION 6. COMPENSATION.

6.1 Pricing.

The Contractor will be paid for the services described in the Scope of Services [describe how much the Contractor will be paid]. [If you would prefer, you may attach a pricing exhibit to the Contract describing the cost for services].

6.2 Billings.

The Contractor shall submit, on a [frequency basis, i.e. monthly, quarterly, etc.] an invoice for services rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Department shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 (2003 Supp.) The Department may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any goods or services provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

6.3 Payment Clause.

6.4 Delay of Payment Due to Contractor's Failure.

If the Department in good faith determines that the Contractor has failed to perform or deliver any service or product as required by this Contract, the Contractor shall not be entitled to any compensation under this Contract until such service or product is performed or delivered. In this event, the Department may withhold that portion of the Contractor's compensation, which represents payment for service or product that was not performed or delivered.

6.5 Set-Off Against Sums Owed by the Contractor.

In the event that the Contractor owes the State any sum under the terms of this Contract, any other Contract, pursuant to any judgment, or pursuant to any lack the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under the law of setoff.

SECTION 7. TERMINATION.

7.1 Immediate Termination by the Department.

The Department may terminate this Contract for any of the following reasons effective immediately without advance notice:

- 7.1.1** In the event the Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
- 7.1.2** The Department determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a client's life, health or safety to be jeopardized;
- 7.1.3** The Contractor fails to comply with confidentiality laws or provisions;
- 7.1.4** The Contractor furnished any statement, representation or certification in connection with this Contract or the RFP which is materially false, deceptive, incorrect or incomplete.

7.2 Termination for Cause.

The occurrence of any one or more of the following events shall constitute cause for the Department to declare the Contractor in default of its obligations under this Contract.

- 7.2.1** The Contractor fails to perform, to the Department's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Contractor;
- 7.2.2** The Department determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;
- 7.2.3** The Contractor fails to make substantial and timely progress toward performance of the Contract;
- 7.2.4** The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the Department reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- 7.2.5** The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract; or
- 7.2.6** The Contractor has engaged in conduct that has or may expose the State or the Department to liability, as determined in the Department's sole discretion.
- 7.2.7** The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property right.

7.3 Notice of Default.

If there is a default event caused by the Contractor, the Department shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Department's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the Department may either:

- 7.3.1** Immediately terminate the Contract without additional written notice; or,
- 7.3.2** Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

7.4 Termination Upon Notice.

Following [enter the number of days] days' written notice, the Department may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to the Department up to and including the date of termination.

7.5 Termination Due to Lack of Funds or Change in Law.

The Department shall have the right to terminate this Contract without penalty by giving sixty (60) days' written notice to the Contractor as a result of any of the following:

- 7.5.1** Adequate funds are not appropriated or granted to allow the Department to operate as required and to fulfill its obligations under this Contract;
- 7.5.2** Funds are de-appropriated or not allocated or if funds needed by the Department, at the Department's sole discretion, are insufficient for any reason;
- 7.5.3** The Department's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Department;
- 7.5.4** The Department's duties are substantially modified.

7.6 Remedies of the Contractor in Event of Termination by the Department

In the event of termination of this Contract for any reason by the Department, the Department shall pay only those amounts, if any, due and owing to the Contractor for services actually rendered up to and including the date of termination of the Contract and for which the Department is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the

Contractor's claim. This provision in no way limits the remedies available to the Department under this Contract in the event of termination. However, the Department shall not be liable for any of the following costs:

- 7.6.1** The payment of unemployment compensation to the Contractor's employees;
- 7.6.2** The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
- 7.6.3** Any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;
- 7.6.4** Any taxes that may be owed by the Contractor in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

7.7 The Contractor's Termination Duties.

The Contractor upon receipt of notice of termination or upon request of the Department, shall:

- 7.7.1** Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, any other matters the Department may require.
- 7.7.2** Immediately cease using and return to the Department any personal property or materials, whether tangible or intangible, provided by the Department to the Contractor.
- 7.7.3** Comply with the Department's instructions for the timely transfer of any active files and work product produced by the Contractor under this Contract.
- 7.7.4** Cooperate in good faith with the Department, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor.
- 7.7.5** Immediately return to the Department any payments made by the Department for services that were not rendered by the Contractor.

SECTION 8. CONFIDENTIAL INFORMATION.

8.1 Access to Confidential Data.

The Contractor's employees, agents and subcontractors may have access to confidential data maintained by the Department to the extent

necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Department. The Contractor shall provide to the Department a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract. The private or confidential data shall remain the property of the Department at all times.

8.2 No Dissemination of Confidential Data.

No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the Department, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the Department. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Department.

8.3 Subpoena.

In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the Department and cooperate with the Department in any lawful effort to protect the confidential information.

8.4 Reporting of Unauthorized Disclosure.

The Contractor shall immediately report to the Department any unauthorized disclosure of confidential information.

8.5 Survives Termination.

The Contractor's obligation under this Contract shall survive termination of this Contract.

SECTION 9. INDEMNIFICATION.

9.1 By the Contractor.

The Contractor agrees to indemnify and hold harmless the State of Iowa and the Department, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Iowa or the Department, related to or arising from:

9.1.1 Any breach of this Contract;

- 9.1.2** Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;
- 9.1.3** The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;
- 9.1.4** Any failure by the Contractor to comply with the compliance with the Law provision of this Contract;
- 9.1.5** Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa;
- 9.1.6** Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
- 9.1.7** Any failure by the Contractor to adhere to the confidentiality provisions of this Contract.

9.2 Indemnification by the Department.

- 9.2.1** The Department shall, only to the extent consistent with Article VII, Section 1 of the Iowa Constitution and Iowa Code Chapter 669, indemnify and hold harmless the Contractor from and against any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments arising directly out of the negligence or wrongful acts or omissions of any employee of the Department while acting within the scope of the employee's office of employment in connection with the performance of this Contract.
- 9.2.2** At the option of the Department, the Contractor shall be represented by the Attorney General of the State or special counsel retained by the State or the Attorney General of the State with respect to any litigation brought by or against the Department or such persons with respect to any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments to which such persons may be subject and to which they are entitled to be indemnified hereunder.
- 9.2.3** If the Department makes any indemnity payments pursuant to this Section and the person to or on behalf of whom such payments are made thereafter collects any of such amounts from others, that person shall promptly repay such amounts to the Department, without interest.

9.3 Survives Termination.

Indemnification obligation of the parties shall survive termination of this Contract.

SECTION 10. INSURANCE.

10.1 Insurance Requirements.

The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals. The Contractor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the Department shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

10.2 Types and Amounts of Insurance Required.

Unless otherwise requested by the Department in writing, the Contractor shall cause to be issued the insurance coverage's set forth below:

TYPE OF INSURANCE	LIMIT	AMOUNT
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2 Million
	Product/Completed Operations Aggregate	\$1 Million
	Personal Injury	\$1 Million
	Each Occurrence	\$1 Million
Automobile Liability (including any auto, hired autos, and non-owned autos)	Combined Single Limit	\$1 Million
Excess Liability, Umbrella Form	Each Occurrence	\$1 Million
	Aggregate	\$1 Million
Workers Compensation and Employer Liability	As required by Iowa law	As required by Iowa law
Property Damage	Each Occurrence	\$1 Million
	Aggregate	\$1 Million

10.3 Certificates of Coverage.

All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of the Department. The Contractor shall submit

certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Department upon execution of this Contract. The certificates shall be subject to approval by the Department. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Department. Approval of the insurance certificates by the Department shall not relieve the Contractor of any obligation under this Contract.

SECTION 11 BONDS.

11.1 Fidelity Bond.

The Contractor shall, within [enter number of days] days of the effective date of this Contract, post a fidelity bond in an amount equal to \$[enter dollar amount] and provide a copy of the bond to the Department. The Contractor shall pay the cost of the bond. The bond shall provide funds to the Department in the event that the Department or the State of Iowa suffers any liability, loss, damage or expense as a result of any fraudulent or dishonest act or omission of the Contractor or any subcontractor or any officer, director, employee or agent of the Contractor or any subcontractor or any parent or subsidiary corporation of the Contractor or any subcontractor related to the performance of this Contract. The bond shall be in a form customarily used in the industry, and shall be written by a surety authorized to do business in Iowa and that is acceptable to the Department. The bond shall be in effect at all times during the term of this Contract and any extensions or renewals thereof and for one year following the conclusion of the Contract. The bond shall provide funds to the Department for any fraudulent or dishonest act or omission, which occurs during the term of the bond regardless of the date the act or omission is discovered, or a claim is made. The Contractor warrants that it will maintain the required fidelity bond coverage as described herein without any lapse in coverage. Failure on the part of the Contractor to furnish such a bond in the time stated, or to maintain the bond in full force and effect during the term of the Contract and any extension or renewal thereof, shall be a material breach of the Contract and shall be considered cause for the Department to declare the Contractor in default under this Contract. The Department's receipt of such bond or other proof of coverage does not constitute approval of the bond coverage nor does the bond relieve the Contractor from the faithful and honest performance of this Contract.

11.2 Performance Bond.

The Contractor shall post a performance bond in an amount equal to \$[enter dollar amount] and provide a copy of the bond to the Department within (10) days of execution of this Contract. The Contractor shall pay the cost of the bond. In the event that the Contractor or any subcontractor or any officer, director, employee or agent of the Contractor or any subcontractor or any parent or subsidiary corporation of the Contractor or any subcontractor fails to fully and faithfully perform each material requirement of this Contract, including without limitation the Contractor's obligation to indemnify the Department and pay damages to the Department, the performance bond shall be forfeited to the Department. The bond shall be in a form customarily used in the [enter the relevant industry] industry and shall be written by a surety authorized to do

business in Iowa and that is acceptable to the Department. The bond shall be in effect at all times during the term of this Contract and any extensions or renewals thereof and for one (1) year following the conclusion of the Contract. The Contractor warrants that it will maintain the required performance bond coverage as described herein without any lapse in coverage. A lapse of the bond will be a material breach of the Contract and shall be considered cause for the Department to declare the Contractor in default under this Contract.

SECTION 12. PROJECT MANAGEMENT AND REPORTING.

12.1 Project Manager.

At the time of execution of this Contract, each party shall designate, in writing, a Project Manager to serve until the expiration of this Contract or the designation of a substitute Project Manager. During the term of this Contract, each Project Manager shall be available to meet monthly, unless otherwise mutually agreed, to review and plan the services being provided under this Contract.

12.2 Review Meetings.

During the review meetings the Project Managers shall discuss progress made by the Contractor in the performance of this Contract. Each party shall provide a status report, as desired by a Project Manager, listing any problem or concern encountered since the last meeting. Records of such reports and other communications issued in writing during the course of Contract performance shall be maintained by each party.

12.3 Reports.

At the next scheduled meeting after which any party has identified in writing a problem, the party responsible for resolving the problem shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. For as long as a problem remains unresolved, written reports shall identify:

- 12.3.1** Any event not within the control of the Contractor or the Department that accounts for the problem;
- 12.3.2** Modifications to the Contract agreed to by the parties in order to remedy or solve the identified problem;
- 12.3.3** Damages incurred as a result of any party's failure to perform its obligations under this Contract; and
- 12.3.4** Any request or demand for services by one party that another party believes are not included within the terms of this Contract.

12.4 Problem Reporting Omissions.

The Department's acceptance of a problem report shall not relieve the Contractor of any obligation under this Contract or waive any other

remedy under this Contract or at law or equity that the Department may have. The Department's failure to identify the extent of a problem or the extent of damages incurred as a result of a problem shall not act as a waiver of performance under this Contract. Where other provisions of this Contract require notification of an event in writing, the written report shall be considered a valid notice under this Contract provided the parties required to receive notice are notified.

12.5 Change Order Procedure.

The Department may at any time request a modification to the Scope of Services using a Change Order. The following procedures for a change order shall be followed:

12.5.1 Written Request.

The Department shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Services.

12.5.2 The Contractor's Response.

The Contractor shall submit to the Department a time and cost estimate for the requested Change Order within five (5) business days of receiving the Change Order Request.

12.5.3 Acceptance of the Contractor Estimate.

If the Department accepts the estimate presented by the Contractor within five (5) business days of receiving the Contractor's response, the Contractor shall perform the modified services subject to the time and cost estimates included in the Contractor response. The Contractor's performance and the modified services shall be governed by the terms and conditions of this Contract.

12.5.4 Adjustment to Compensation.

The parties acknowledge that a Change Order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract.

SECTION 13. LIMITATION OF LIABILITY.

The Contractor expressly acknowledges that the [name of project or services] is subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the [name of project or services] the Contractor shall not hold the Department liable in any manner for the resulting changes. The Department shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Department's right to terminate the Contract pursuant to the termination provisions.

SECTION 14. INTELLECTUAL PROPERTY, PATENT AND COPYRIGHT.

14.1 Rights in Data.

The Department shall be and shall remain the owner of all data and records provided to the contractor. The Contractor will not use the Department's data and records for any purpose other than providing services under the contract, nor will any part of the data and records be disclosed, sold, assigned, leased, or otherwise disposed to third-parties or commercially exploited by or on behalf of the Contractor.

14.2 Ownership of Work Product.

The Department shall own all work products developed or furnished in connection with the Contract by the Contractor or any subcontractor (the "Work Product"). The Contractor shall require that all agreements with subcontractors provide for the irrevocable assignment of rights to the Department, without additional consideration of all Work Products of the subcontractors. The Contractor shall give the Department all assistance reasonably requested by the Department to perfect the Department's ownership of all Work Products, including the execution and delivery of documents assigning title to such Work Product to the Department. All applicable rights to patents, copyrights, trademarks, trade secrets and other property rights in the Work Product shall be the property of the Department. The Department shall grant the Contractor a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the Work Product for the purposes of complying with this Agreement or any relevant provision of state or federal law.

SECTION 15. WARRANTIES.

15.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law.

All warranties made by the Contractor in all provisions of this Contract and the Proposal by the Contractor, whether or not this Contract specifically denominates the Contractor's promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Department, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Contractor. The provisions of this Section apply during the term of this Contract and any extensions or renewals thereof.

15.2 Concepts, Materials, and Works Produced.

Contractor represents and warrants that all the concepts, materials and Works produced, or provided to the Department pursuant to the terms of this Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and Works. The Contractor represents and warrants that the concepts, materials and Works and the Department's use of same and the exercise by the

Department of the rights granted by this Contract shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Contractor and any other materials, Works and methodologies used in connection with providing the services contemplated by this Contract.

15.3 Professional Practices.

The Contractor represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

15.4 Conformity with Contractual Requirements.

The Contractor represents and warrants that the Works will appear and operate in conformance with the terms and conditions of this Contract.

15.5 Authority to Enter into Contract.

The Contractor represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the Department.

15.6 Obligations Owed to Third Parties.

The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Department will not have any obligations with respect thereto.

15.7 Title to Property.

The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the Department is good and that transfer of title or license to the Department is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

15.8 Industry Standards.

The Contractor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the applicable industry standards in the performance of this Contract.

15.9 Technology Updates.

The Contractor represents warrants that it shall continually use and integrate the most current and up-to-date technology commercially available.

SECTION 16. CONTRACT ADMINISTRATION.

16.1 Independent Contractor.

The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents and any subcontractors performing under this Contract are not employees or agents of the State of Iowa or any agency, division or department of the state. Neither the Contractor nor its employees shall be considered employees of the Department or the State of Iowa for federal or state tax purposes. The Department will not withhold taxes on behalf of the Contractor (unless required by law).

16.2 Incorporation of Documents.

The RFP, and amendments and written responses to bidders' questions (collectively RFP) and the Contractor's Proposal submitted in response to the RFP, form the Contract between the Contractor and the Department and are incorporated herein by reference. The parties are obligated to perform all services described in the RFP and Proposal unless the Contract specifically directs otherwise.

16.3 Order of Priority.

In the event of a conflict between the Contract, the RFP and the Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFP; (3) Proposal.

16.4 Compliance with the Law.

The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract.

16.5 Amendments.

This Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this Contract must be in writing and fully executed by the parties.

16.6 Third Party Beneficiaries.

There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State, the Department and the Contractor.

16.7 Choice of Law and Forum.

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Department or the State of Iowa.

16.8 Assignment and Delegation.

This Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.

16.9 Use of Third Parties.

The Department acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify the Department in writing of all subcontracts relating to services to be performed under this contract. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all services performed under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors. The Department shall have the right to request the removal of a subcontractor from the Contract for good cause.

16.10 Integration.

This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

16.11 Headings or Captions.

The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

16.12 Not a Joint Venture.

Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

16.13 Joint and Several Liability.

If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

16.14 Supersedes Former Contracts or Agreements.

This Contract supersedes all prior Contracts or Agreements between the Department and the Contractor for the services provided in connection with this Contract.

16.15 Waiver.

Except as specifically provided for in a waiver signed by duly authorized representatives of the Department and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

16.16 Notice.

16.16.1 Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows:

If to the Department:

[Name of person and address]

If to the Contractor [name and address]:

16.16.2 Each such notice shall be deemed to have been provided:

16.16.2.1 At the time it is actually received; or,

16.16.2.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

16.16.2.3 Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

16.16.3 From time to time, the parties may change the name and address of a party designated to receive notice. Such change

of the designated person shall be in writing to the other party and as provided herein.

16.17 Cumulative Rights.

The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

16.18 Severability.

If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

16.19 Time is of the Essence.

Time is of the essence with respect to the performance of the terms of this Contract.

16.20 Authorization.

Each party to this Contract represents and warrants to the other parties that:

16.20.1 It has the right, power and authority to enter into and perform its obligations under this Contract.

16.20.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

16.21 Successors in Interest.

All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

16.22 Record Retention and Access.

The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the Department throughout the term of this Contract for a period of at least **three (3) or five (5)** years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records.

16.23 Solicitation.

The Contractor warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

16.24 Obligations Beyond Contract Term.

This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of the Department and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

16.25 Counterparts.

The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

16.26 Additional Provisions.

The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

16.27 Further Assurances and Corrective Instruments.

The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.

16.28 Delay or Impossibility of Performance.

The Contractor shall not be in default under this Contract if performance is delayed or made impossible by an act of God, flood, fire or similar events. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of this Contract.

16.29 Suspension and Debarment.

The Contractor certifies pursuant to 31 CFR Part 19 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency. The Contractor shall execute the certification regarding debarment attached as Exhibit [enter the number or letter that identifies the exhibit].

16.30 Lobbying Restrictions.

The Contractor shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. Section 1352 and any implementing regulations and shall be responsible for ensuring that any subcontractor fully complies with all certification and disclosure requirements. The Contractor shall execute the

certification regarding lobbying restrictions attached as Exhibit [enter the number or letter that identifies the exhibit].

16.31 Tobacco Smoke Prohibited.

16.31.1 Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. Federal programs include grants, cooperative agreements, loans or loan guarantees and contracts. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities (other than clinics) where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.

16.31.2 The Contractor certifies that it and its subcontractors will comply with the requirements of the Pro-Children Act of 1994 and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The Contractor shall execute the Certification of Compliance with the Pro-Children Act of 1994 attached as Exhibit [enter the number or letter that identifies the exhibit] and provide the original certification when it executes this Contract.

16.32 Certified Audits.

Local governments and non-profit subrecipient entities that expend \$300,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to the Department if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Department. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the Department that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Department. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships.

16.33 Drug Free Work Place.

The Contractor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations

SECTION 17. EXECUTION.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other goods and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Contract and have caused their duly authorized representatives to execute this Contract.

NAME OF THE DEPARTMENT:

By _____
Date: _____

NAME OF THE CONTRACTOR:

By _____
Date: _____
Federal Tax Identification Number: _____

Exhibit A

CERTIFICATION OF COMPLIANCE WITH PRO-CHILDREN ACT OF 1994

[Select appropriate type of contractor: Vendors, Grantees, Borrowers] must comply with Public Law 103-227, Part C Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act). This Act requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by federal programs either directly or through State or local governments. Federal programs include grants, cooperative agreements, loans or loan guarantees, and contracts. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities (other than clinics) where WIC coupons are redeemed.

The [Contractor, Vendor, Grantee, Borrower] further agrees that the above language will be included in any subawards that contain provisions for children's services and that all subgrantees shall certify compliance accordingly. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to \$1000 per day.

Signature: _____

Title: _____

Organization: _____

Date: _____

Exhibit B
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION -- LOWER TIER COVERED TRANSACTIONS

By signing and submitting this Proposal, the bidder is providing the certification set out below:

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to other remedies available to the federal government the Department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2. The bidder shall provide immediate written notice to the person to whom this Proposal is submitted if at any time the bidder learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principle, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Proposal is submitted for assistance in obtaining a copy of those regulations.

4. The bidder agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency with which this transaction originated.

5. The bidder further agrees by submitting this Proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. A participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the Department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS**

(1) The bidder certifies, by submission of this Proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(2) Where the bidder is unable to certify to any of the statements in this certification, such bidder shall attach an explanation to this Proposal.

(Signature)

(Date)

(Title)

(Company Name)

Exhibit C
CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid on behalf of the Sub-Grantee to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of the Congress, an officer or employee of the Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant loan or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of the Congress, or an employee of a Member of Congress in connection with this Contract, grant, loan, or cooperative agreement, the applicant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C.A. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: _____

Title: _____

Organization: _____

Date: _____

ATTACHMENT ____: PROPOSAL CERTIFICATION

PROPOSAL CERTIFICATION

BIDDERS – SIGN AND SUBMIT CERTIFICATION WITH PROPOSAL.

I certify that I have the authority to bind the bidder indicated below to the specific terms, conditions and technical specifications required in the Department's Solicitation and offered in the bidder's proposal. I understand that by submitting this proposal, the bidder indicated below agrees to provide **[state description of services]** which meet or exceed the requirements of the Department's RFP unless noted in the proposal and at the prices quoted by the bidder.

I certify that the contents of the proposal are true and accurate and that the bidder has not made any knowingly false statements in the proposal.

Name

Date

Title

Name of Bidder Organization

**ATTACHMENT ____: CERTIFICATION OF INDEPENDENCE AND
NO CONFLICT OF INTEREST**

CERTIFICATION OF INDEPENDENCE AND NO CONFLICT OF INTEREST

By submission of a proposal, the bidder certifies (and in the case of a joint proposal, each party thereto certifies) that:

- the proposal has been developed independently, without consultation, communication or agreement with any employee or consultant of the Department who has worked on the development of this RFP, or with any person serving as a member of the evaluation committee;
- the proposal has been developed independently, without consultation, communication or agreement with any other bidder or parties for the purpose of restricting competition;
- unless otherwise required by law, the information in the proposal has not been knowingly disclosed by the bidder and will not knowingly be disclosed prior to the award of the contract, directly or indirectly, to any other bidder;
- no attempt has been made or will be made by the bidder to induce any other bidder to submit or not to submit a proposal for the purpose of restricting competition;
- no relationship exists or will exist during the contract period between the bidder and the Department that interferes with fair competition or is a conflict of interest.

Name

Date

Title

Name of Bidder Organization